



**BILLING CODE 6351-01**

**COMMODITY FUTURES TRADING COMMISSION**

**17 CFR Parts 9, 12, and 171**

**Rules of Practice; Amendments to Delegations of Authority to the Office of General Counsel**

**AGENCY:** Commodity Futures Trading Commission

**ACTION:** Final Rule.

**SUMMARY:** The Commodity Futures Trading Commission (“CFTC” or “Commission”) is amending its regulations delegating authority to the Commission’s Office of General Counsel, so that all delegations thereto will be to the General Counsel, with authority to sub-delegate to any Commission employee under the supervision of the General Counsel.

**EFFECTIVE DATE:** [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**FOR FURTHER INFORMATION CONTACT:** Lynn Bulan, Counsel, Office of General Counsel, 1155 21<sup>st</sup> Street, N.W., Washington, D.C. 20581, [lbulan@cftc.gov](mailto:lbulan@cftc.gov) and (202) 418-5120.

**SUPPLEMENTARY INFORMATION:** The Commission is revising delegations of authority to the Office of General Counsel, replacing delegations to the Deputy General Counsel for Opinions and Review with delegations to the General Counsel. The reason for this change is due to the elimination of the position of Deputy General Counsel for Opinions and Review under a reorganization within the Office of General Counsel. The revisions will permit the General Counsel to sub-delegate authority to any Commission employee under his or her supervision.

## **I. Rules Being Amended.**

The following CFTC rules are being amended.

### **A. 17 CFR 9.9**

CFTC rule 9.9 delegates certain authority to the Deputy General Counsel for Opinions and Review. Currently, the rule authorizes the Deputy General Counsel for Opinions and Review or his/her designee to handle certain procedural and technical matters and, in his/her discretion, to submit matters otherwise falling within this rule to the Commission for its consideration. The CFTC is changing the rule to grant this authority to the General Counsel. As a result, references to the Deputy General Counsel for Opinions and Review in rule 9.9 have been changed to the General Counsel, and to any employee under the General Counsel's supervision as he or she may designate.

### **B. 17 CFR 12.10**

CFTC rule 12.10(a)(3) sets forth all the persons upon whom the Proceedings Clerk must serve all notices, rulings, opinions, and orders. This list of persons includes the Deputy General Counsel for Opinions and Review. The rule is being revised such that all references to the Deputy General Counsel for Opinions and Review in rule 12.10 have been changed to the General Counsel, and permits the General Counsel to sub-delegate this authority to any Commission employee under his or her supervision.

### **C. 17 CFR 12.408**

CFTC rule 12.408 is titled "Delegation of Authority to the Deputy General Counsel for Opinions." The text of the rule delegates certain functions to the General Counsel and not the Deputy General Counsel for Opinions. In order to conform the title of the section to the substance of the section, the reference in the title of the section has been changed to "Delegation of Authority to the General Counsel."

D. 17 CFR 171.1(c)

CFTC rule 171.1(c) provides the Deputy General Counsel for Opinions the authority to strike a notice of appeal in certain circumstances. All references to the Deputy General Counsel for Opinions in rule 171.1(c) have been changed to the General Counsel, or the General Counsel's delegate.

E. 17 CFR 171.50

CFTC rule 171.50 delegates certain authority to the Deputy General Counsel for Opinions. The current rule authorizes the Deputy General Counsel for Opinions and Review or his/her designee to handle certain procedural and technical matters and, in his/her discretion, to submit matters otherwise falling within this rule to the Commission for its consideration. References in rule 171.50 have been changed to the General Counsel.

## **II. Administrative Compliance.**

### A. Administrative Procedure Act.

The Administrative Procedure Act does not require notice of the proposed rulemaking and an opportunity for public participation in connection with these amendments, as they relate solely to agency organization, procedure and practice.<sup>1</sup> For the same reason, these rules will become effective upon publication in the Federal Register.<sup>2</sup>

Pursuant to the authority contained in the Commodity Exchange Act, in particular section 2(a)(4), 7 U.S.C 2(a)(4), the CFTC corrects part 9, 12 and 171 of Title 17 of the Code of Federal regulations as described below.

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<sup>1</sup> 5 U.S.C. 553(b).

<sup>2</sup> 5 U.S.C. 553(d).

## B. Paperwork Reduction Act and Regulatory Flexibility Act.

This rulemaking does not contain any collections of information for which the Commission must seek a control number under the Paperwork Reduction Act.<sup>3</sup> Moreover, the Regulatory Flexibility Act requires the Commission to consider whether a rulemaking will have a significant economic impact on a substantial number of small businesses only when the agency is obligated to publish a general notice of proposed rulemaking under section 553(b). As this rulemaking relates to agency organization and procedure, and therefore is not subject to notice and comment under section 553(b), a regulatory flexibility analysis is not required.<sup>4</sup>

### **List of Subjects in 17 CFR Parts 9, 12 and 171**

Administrative practice and procedure, Commodity exchanges, Commodity futures, Rules of practice before administrative agency.

For the reasons stated in the preamble, the Commodity Futures Trading Commission amends 17 CFR Parts 9, 12 and 171 as set forth below:

### **PART 9 – RULES RELATING TO REVIEW OF EXCHANGE DISCIPLINARY, ACCESS DENIAL OR OTHER ADVERSE ACTIONS**

1. The authority citation for Part 9 continues to read as follows:

**Authority:** 7 U.S.C. 4a, 6c, 7a, 12a, 12c, 16a, as amended by Title XIII of the Food, Conservation and Energy Act of 2008, Pub. L. 110-246, 122 Stat. 1624 (June 18, 2008), unless otherwise noted.

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<sup>3</sup> See 44 U.S.C. 3501 et seq.

<sup>4</sup> See 5 U.S.C. 601(2).

2. Section 9.9 is amended by revising paragraphs (b)(1) introductory text, (b)(3) and (b)(4), to read as follows:

§ 9.9 Waiver of rules; delegation of authority.

\* \* \* \* \*

(b) \* \* \*

(1) The Commission hereby delegates, until the Commission orders otherwise, to the General Counsel, or to any employee under the General Counsel's supervision as the General Counsel may designate, the authority:

\* \* \*

(3) The General Counsel, or his designee, may submit to the Commission for its consideration any matter which has been delegated pursuant to paragraph (b)(1) of this section.

(4) Nothing in this section will be deemed to prohibit the Commission, at its election, from exercising the authority delegated to the General Counsel, or his designee, under this section.

PART 12 – RULES RELATING TO REPARATION PROCEEDINGS

3. The authority citation for Part 12 continues to read as follows:

**Authority:** 7 U.S.C. 2(a)(12), 12a(5), and 18, as amended by Title XIII of the Food, Conservation and Energy Act of 2008, Pub. L. 110-246, 122 Stat. 1624 (June 18, 2008), unless otherwise noted.

4. Section 12.10 is amended by revising paragraph (a)(3) to read as follows:

§ 12.10 Service.

\* \* \* \* \*

(a) \* \* \*

(3) Service of orders and decisions. A copy of all notices, rulings, opinions and orders of the Proceedings Clerk, the Director of the Office of Proceedings, a Judgment Officer, Administrative Law Judge, the General Counsel or any employee under the General Counsel's supervision as the General Counsel may designate, or the Commission shall be served by the Proceedings Clerk on each of the parties.

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5. Section 12.408 is amended by revising the section heading to read as follows:

§ 12.408 Delegation of authority to the General Counsel.

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PART 171 – RULES RELATING TO REVIEW OF NATIONAL FUTURES  
ASSOCIATION DECISIONS IN DISCIPLINARY, MEMBERSHIP DENIAL,  
REGISTRATION AND MEMBERSHIP RESPONSIBILITY ACTIONS.

Authority and Issuance

6. The authority citation for Part 171 continues to read as follows:

**Authority:** 7 U.S.C. 4a, 12a, and 21, as amended by Title XIII of the Food, Conservation and Energy Act of 2008, Pub. L. 110-246, 122 Stat. 1624 (June 18, 2008), unless otherwise noted.

7. Section 171.1 is amended by revising paragraph (c) to read as follows:

§ 171.1 Scope of rules.

\* \* \* \* \*

(c) Appeals from excluded decisions. If the General Counsel, or any employee under the General Counsel's supervision as the General Counsel may designate, determines that a notice of appeal submitted to the Commission is from a decision that is excluded from

review under this part, the notice of appeal may be stricken and ordered to be returned to the aggrieved party who submitted it.

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8. Section 171.50 is amended by revising paragraphs (a) introductory text, (c), and (d) to read as follows:

§ 171.50 Delegation to the General Counsel.

(a) The Commission hereby delegates, until it orders otherwise, to the General Counsel, or any employee under the General Counsel's supervision as the General Counsel may designate, the authority:

\* \* \* \* \*

(c) The General Counsel, or his designee, may submit to the Commission for its consideration any matter which has been delegated pursuant to paragraph (a) of this section.

(d) Nothing in this section will be deemed to prohibit the Commission, at its election, from exercising the authority delegated to the General Counsel, or his designee, under this section.

Issued in Washington, DC on December 31, 2012, by the Commission.

Sauntia S. Warfield  
Assistant Secretary of the Commission

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